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December 14, 2012

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Agenda No. 20
10/23/12

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

**Re: Report on Legal Issues Relating to Creation of
Office of Inspector General**

Dear Supervisors:

As part of your Board's consideration of the recommendations made by the Citizens' Commission on Jail Violence ("CCJV") regarding the Los Angeles County Jails, this report addresses the legal principles applicable to the creation of an Office of Inspector General ("OIG").

I. Authority to Create the OIG

As your Board is aware, while a board of supervisors cannot direct the manner in which a sheriff performs his assigned law enforcement functions, such boards have a clear statutory duty to supervise the conduct of all county officers, including the sheriff. (Govt. Code section 25303.) California courts have held that the operations of the sheriff and the conduct of his or her employees are legitimate concerns of every board of supervisors. Accordingly, as part of a board's duty to supervise the conduct of the sheriff, it could create an independent oversight entity to look into the sheriff's management of the jails. As envisioned by the CCJV, such an entity would oversee and monitor conditions in County jails, review use of force investigations and the disciplinary process, conduct its own investigations, and review and conduct its own audits and inspections, all with the goal of ensuring that the Board and the public are kept informed of jail conditions, that problems are promptly and publicly identified, and that reforms are recommended as appropriate.

Should your Board create an OIG, the Sheriff would continue to have responsibility for law enforcement operations, with the OIG advising the Sheriff and your Board and providing public accountability. As the CCJV points out in its recommendations, through independent and public reports, an OIG could help ensure that problems come to light and needed reforms are publicly presented and discussed in a timely manner.

II. Confidentiality Concerns

In considering the role of the OIG, the confidentiality of the Sheriff's Department investigative reports, conclusions, and personnel records will have to be taken into account. Generally, peace officer personnel records, including certain investigative reports, are considered confidential and the Penal Code limits access to such records. Inmates maintain certain privacy interests regarding their incarceration. An inmate's medical and psychiatric records are generally considered to be confidential. The County is required to maintain the confidentiality of these records.

It is imperative that the OIG maintain the security and confidentiality of any such records and the information contained therein. The OIG will need to develop protocols to safeguard the information from inadvertent disclosure pursuant to Penal Code section 832.7(a) and Evidence Code section 1043, et seq, and any other applicable confidentiality laws.

III. Attorney vs. Non-Attorney

Your Board has also asked whether the Inspector General ("IG"), who is appointed to head the OIG, should be an attorney. While there is no legal requirement that the IG be an attorney, we would recommend that the IG be an attorney and serve as special counsel to, and have an attorney-client relationship with, both your Board and the Sheriff. We believe that this status would help promote the IG's access to police officer personnel and disciplinary information without jeopardizing the legally mandated confidentiality of such information. We further believe this would best facilitate the ability of the IG to have candid discussions and make recommendations to the Sheriff regarding specific personnel and disciplinary matters. Finally, we believe this status will best facilitate the ability for your Board, the Sheriff and the IG to have frank discussions regarding Sheriff's Department issues which are brought to the attention of the IG, while not prohibiting the IG from issuing appropriate public reports on matters within the IG's jurisdiction.

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If you have questions concerning this matter, please contact me, Assistant County Counsel Roger H. Granbo at (213) 974-1609, or Principal Deputy County Counsel Jennifer A.D. Lehman at (213) 974-1908.

Very truly yours,



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County Counsel

JFK:jb

c: Leroy D. Baca
Sheriff

William T Fujioka
Chief Executive Officer

Sachi A. Hamai, Executive Officer
Board of Supervisors